

No. \_\_\_\_\_

**SHARYN JOY TEITELBAUM**

**Plaintiff,**

**v.**

**HOWARD L. NATIONS and  
HOWARD NATIONS, P.C.,  
d/b/a THE NATIONS LAW FIRM**

**Defendants.**

§ **IN THE DISTRICT COURT OF**  
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§ **\_\_\_\_ JUDICIAL DISTRICT**  
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§ **HARRIS COUNTY, TEXAS**

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**PLAINTIFF'S ORIGINAL PETITION**

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Plaintiff Sharyn Joy Teitelbaum files this Original Petition against Defendants Howard L. Nations and Howard Nations, P.C., d/b/a The Nations Law Firm.

**I.**

**DISCOVERY CONTROL PLAN**

1.01. Plaintiff alleges that discovery should be conducted under Level 3.

**II.**

**PARTIES**

2.01. Plaintiff Sharyn Joy Teitelbaum is an individual who resides at 7200 Elmswood Lane, Plano, Texas 75025 in Collin County.

2.02. Defendant Howard L. Nations ("Nations") is an individual who may be served at 3131 Briarpark Drive, Suite 208, Houston, Texas 77042 in Harris County.

2.03. Defendant Howard L. Nations, P.C., d/b/a The Nations Law Firm ("NLF") is a professional corporation located at 3131 Briarpark Drive, Suite 208, Houston, Texas 77042 in Harris County. NLF may be served through its registered agent Howard L. Nations

located at 3131 Briarpark Drive, Suite 208, Houston, Texas 77042 in Harris County.

### III. JURISDICTION AND VENUE

3.01. This Court has subject matter jurisdiction over this claim. Plaintiff seeks monetary damages within the jurisdictional limits of the Court. Pursuant to Rule 47(c) of the Texas Rules of Civil Procedure, Plaintiffs seek damages/monetary relief over \$200,000 but not more than \$1,000,000.

3.02. Venue is proper in Harris County, Texas under § 15.002(a) (3) of the TEX. CIV. PRAC. & REM. CODE as Harris County is the county of Defendant NLF's principal office in the State of Texas and was so at the time the cause of action arose. Venue is also proper in Harris County under § 15.002(a) (1) of the TEX. CIV. PRAC. & REM. CODE as Harris County is a county in which a substantial part of the events or omissions giving rise to this claim occurred.

### IV. BACKGROUND

4.01. In 2009, Plaintiff suffered from pelvic organ prolapse. She subsequently had surgery, which included the implantation of a pelvic mesh implant manufactured by Coloplast. After the surgery, Plaintiff experienced problems with bleeding and cramping. As a result, Plaintiff had another surgery, including vaginal mesh revision and cystoscopy.

4.02. On approximately October 13, 2014, Plaintiff entered an Attorney-Client Contract with Defendant NLF to "prosecute all claims against all necessary defendants arising out of Event: Adverse event(s) following implantation of transvaginal mesh/pelvic surgical mesh product(s)." The Contract provided a 40% contingent fee for NLF. The Contract stated that the fees would be distributed as follows: 40% to NLF and 60% to Levin Papantonio Thomas Mitchell Rafferty & Proctor, PA ("Levin Papantonio"). While the

Attorney-Client Contract provided that the attorneys had the option to associate other counsel to assist in the preparation and litigation of the case, the only attorneys named were NLF and Levin Papantonio. NLF did not obtain Plaintiff's prior consent in writing to associate Levin Papantonio or any other law firm, as required by Texas Disciplinary Rule of Professional Conduct 1.04(f).

4.03. After execution of the Attorney-Client Contract, Levin Papantonio notified Plaintiff that Levin Papantonio could not represent Plaintiff in her pelvic mesh case. Plaintiff then contacted NLF, who told Plaintiff that NLF would continue to represent her. Plaintiff understood and assumed that the only law firm involved in her case would be NLF. NLF did not seek or obtain Plaintiff's consent to receive any fee other than the 40% of the original 40% provided for in the Attorney-Client Contract—or a total of 16% of any amount collected, as provided in the contract.

4.04. Unbeknownst to Plaintiff, NLF apparently made a secret arrangement with the law firm of Motley Rice, LLC, for Motley Rice to lump Plaintiff's case together with 749 other cases to attempt to negotiate a settlement on behalf of Plaintiff and other unidentified clients. NLF did not consult with Plaintiff or give her any notice concerning those negotiations or offers that NLF made on her behalf.

4.05 During the course of NLF's supposed representation of Plaintiff, the Plaintiff repeatedly called to find out the status of her case and was repeatedly told that there was nothing to report. Plaintiff was not told about NLF's dealings with Motley Rice.

4.06. Finally, an NLF staff member called to report that a settlement had been obtained. On March 15, 2017, NLF forwarded to Plaintiff a copy of portions of the already-negotiated settlement agreement. Plaintiff asked for the other settlement documents and

was told that they were confidential and that Plaintiff could not have a copy and could not see them. Not until Plaintiff received the partial settlement documents did she learn of Motley Rice's purported involvement. When she asked who Motley Rice was, an NLF legal assistant vaguely responded that "There were multiple firms involved in this settlement, and for ease of administration, it goes through one firm (Motley Rice)." NLF never asked for or received Plaintiff's consent to have Motley Rice represent her or take any action or position on her behalf.

4.07. Despite Plaintiff's requests, NLF refused to give Plaintiff an opportunity to view all of the settlement documents. Instead, NLF told Plaintiff that "time was of the essence" and said she should sign the agreement if she wanted to receive the settlement amount. Reluctantly, and without being able to see or obtain the information she had requested, Plaintiff acquiesced to NLF's advice and coercion and signed the settlement agreement (the portions that NLF would show her).

4.08 When NLF sent Plaintiff a settlement check, it was for less than the settlement amount shown in the documents that she had reviewed. NLF provided one-page settlement disbursement sheet that vaguely described various deductions from her gross settlement amount. The deductions included deductions for certain fees and expenses that Plaintiff had not agreed to pay, including both unexplained expenses and attorneys' fees that included money for Motley Rice and for an MDL Fee Assessment. When Plaintiff asked for further explanation, NLF stated that its expenses included both "case-specific expenses" incurred by NLF as well as "general expenses incurred to benefit all of our firm's mesh implant clients and spread across all the clients." NLF had never before told Plaintiff that she would have to pay such expenses, and she did not agree to do so. NLF also told Plaintiff

that she had to pay “case-specific expenses” for Motley Rice, whom she had never heard of before the purported settlement and whom she had not authorized to incur any expenses on her behalf.

4.09. The NLF Attorney-Client Contract did not mention Motley Rice, a law firm that does not have an office in Texas. NLF never requested or obtained Plaintiff’s consent to divide fees with Motley Rice.

4.10. On approximately August 17, 2018, Plaintiff requested that NLF provide her with a complete copy of her file, including all paper and electronic files of any kind maintained or generated by NLF, Levin Papantonio and Motley Rice. This request was in addition to Plaintiff’s request that NLF provide her with a complete copy of the settlement documents from her case. NLF did not fully comply with its obligation to produce Plaintiff’s file to her and failed to provide her with a complete copy of the settlement documents and the communications between NLF and Motley Rice regarding Plaintiff’s case.

## **V. CAUSES OF ACTION**

5.01. Plaintiff incorporates by reference in these causes of action the allegations above. To the extent that any allegations in this Petition are inconsistent or potentially inconsistent, Plaintiff pleads in the alternative, as authorized by Texas Rules of Civil Procedure 47 and 48.

### **A. Breach of Fiduciary Duty**

5.02. As Plaintiff’s attorneys, Defendants were in a fiduciary relationship with Plaintiff and owed her fiduciary duties, including to act fairly and equitably in their transactions with Plaintiff; to protect her confidential information and not use or disclose

that information without Plaintiff's consent or other proper authorization; to make full disclosure of all material facts to Plaintiff; to be loyal to Plaintiff and to avoid conflicts of interest; to act in utmost good faith and with most scrupulous honesty in all dealings with Plaintiff; to place Plaintiff's interests before the interests of any other person, including the interests of other clients of Defendants, Defendants' own self-interests, and the interest of any other law firm; to protect and safeguard Plaintiff's property; and to protect her property, including to provide the complete file to her in response to her request.

5.03. Defendants' breaches of fiduciary duties included:

- a. Agreeing to divide fees, and then dividing fees, with Motley Rice without Plaintiff's knowledge or consent, and failing to disclose the information that Texas Disciplinary Rule of Professional Conduct 1.04(f) required to be disclosed in order to obtain Plaintiff's informed consent—that is, failing to obtain Plaintiff's "*consent[] in writing to the terms of the arrangement prior to the time of the association or referral proposed*," including: (i) the identity of all lawyers or law firms who will participate in the fee-sharing agreement, and (ii) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation, and (iii) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made";
- b. Apparently negotiating an aggregate or global settlement without obtaining Plaintiff's informed consent after disclosing the information that Texas Disciplinary Rule of Professional Conduct 1.08(f) required to be disclosed—that is, failing to obtain Plaintiff's "consent[] after consultation, including disclosure of the existence and nature of all the claims . . . involved and of the nature and extent of the participation of each person in the settlement";
- c. Taking more than the 40% of the fees that the Attorney-Client Contract stated would be distributed to Defendants;
- d. Apparently representing multiple mesh clients, without obtaining or attempting to obtain Plaintiff's informed consent to actual or potential conflicts of interest, as required by Disciplinary Rule 1.06;

- e. Deducting from Plaintiff's settlement recovery improper expenses, including "the general expenses incurred to benefit all of [NLF's] mesh implant clients and spread across all clients"; unspecified and unexplained "case-specific expenses" allegedly incurred by NLF; alleged "case-specific expenses" of Motley Rice; and alleged "MDL Expense Assessment";
- f. Charging Plaintiff for attorneys' fees identified as "MDL Fee Assessment" and "Settlement Counsel (Motley Rice)" when NLF never gave Plaintiff the option (provided by the relevant MDL Orders) of not participating in the "MDL 2387 Attorney Participation Agreement";
- g. Failing and refusing to disclose material information to Plaintiff, including the involvement and role of Motley Rice; the status of the case on an ongoing basis; NLF's role and participation, or lack thereof, in Plaintiff's case; settlement negotiations and offers; complete settlement terms; information required by Disciplinary Rules 1.03, 1.04(f), 1.06(c)(2), and 1.08(f);
- h. Failing to protect Plaintiff's confidential information, as required by Disciplinary Rule 1.05, and instead, disclosing that information to Motley Rice without Plaintiff's knowledge or consent;
- i. Undertaking and continuing representation of Plaintiff when NLF had improper conflicts of interest, including NLF's apparent self-interest in not spending the time and effort to prosecute Plaintiff's case (as NLF had agreed to do) and instead to refer it to another law firm, and the conflicts arising from NLF's representation of other clients in the mesh litigation;
- j. Refusing to produce to Plaintiff her entire file as required by Disciplinary Rules 1.14(b) and 1.15(d).

Based upon Defendants' breaches of fiduciary duties, Plaintiff seeks recovery of all damages caused by those breaches, including the improper and excessive fees and expenses and any reduction in Plaintiff's recovery caused by Defendants' conflicts of interest described above. Additionally, as authorized by *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999), based upon Defendants' breaches of fiduciary duties and related ethical duties, Plaintiff seeks forfeiture

of the fees and expenses that Defendants improperly charged Plaintiff and any fees that Defendants improperly received as a result of their conflicts of interest.

## **B. Professional Negligence**

5.04. By engaging in the conduct described above, Defendants are liable to Plaintiff for professional negligence. As attorneys for Plaintiff, Defendants owed Plaintiff a duty to exercise such degree of care in its representation of Plaintiff as would be exercised by a lawyer or law firm of ordinary prudence under the same or similar circumstances. Defendants failed to exercise ordinary care with respect to their representation of Plaintiff, thereby causing substantial damages to Plaintiff.

5.05. Defendants breached the duty of care that Defendants owed to Plaintiff in multiple ways, including:

- a. Falsely stating to Plaintiff that NLF would represent Plaintiff and “prosecute the case,” and then, instead of doing that, secretly involving Motley Rice without Plaintiff’s knowledge or consent and agreeing to pay a fee and expenses to Motley Rice;
- b. Failing to disclose that NLF had sent or referred Plaintiff’s case or responsibility for the prosecution and negotiation of Plaintiff’s case and settlement.

## **VI. DAMAGES**

6.01. As a result of the Defendants’ conduct described above, Plaintiff has sustained actual damages in excess of the minimum jurisdictional amount of this Court.

6.02. Defendants’ conduct as described above was grossly negligent or was committed with actual conscious indifference to the rights, safety and welfare of Plaintiff, as those terms are defined in Texas law. Plaintiff is therefore entitled to recover exemplary damages from the Defendants in such amount as the jury may find reasonable and



appropriate in order to set an example for others, especially other attorneys and law firms similarly situated. Based upon Defendants' misapplication of Plaintiff's property, held by Defendants as fiduciaries, under § 41.008(c)(10) of the Texas Civil Practice and Remedies Code, the limitation caps that generally apply to exemplary damages do not apply in this case.

## **VII.**

### **EQUITABLE FORFEITURE**

7.01. Because of Defendants' breaches of fiduciary and ethical duties to Plaintiff as her attorneys, the Court should order that in addition to, or as an alternative to, all other remedies, Defendants disgorge, forfeit and return to Plaintiff any and all fees and expenses, and any other financial or economic benefits, that Defendants wrongfully obtained as a result of their breaches of duty to Plaintiff.

## **VIII.**

### **JURY TRIAL**

8.01. Plaintiff hereby requests a jury trial and will pay the jury fee.

### **PRAYER**

Plaintiff Sharyn Joy Teitelbaum requests that upon final disposition, she have judgment against the Defendants for:

- (a) Actual damages;
- (b) Forfeiture or disgorgement of all fees, expenses and other monies improperly paid to Defendants as a result of the settlement;
- (c) Any applicable civil penalties;
- (d) Exemplary damages (uncapped, based on breaches of fiduciary duty);
- (e) Costs;
- (f) Pre-judgment and post-judgment interest;

- (g) Other amounts recoverable under applicable law, and other relief to which she is entitled.

Respectfully submitted,

Feldman & Feldman P.C.

By: /s/ Cris Feldman  
Cris Feldman  
State Bar No. 24012613  
3355 West Alabama, Suite 1220  
Houston, Texas 77098  
713.986.9471  
*cris.feldman@feldman.law*

Attorney for Plaintiff